

Public Notice

U S Army Corps of Engineers

Huntington District

In reply refer to Public Notice Issuance Date: April 13, 2005 200400967

Stream: Sycamore Run Closing Date: May 14, 2005

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (reference above)

502 Eighth Street

Huntington, West Virginia 25701-2070 Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT:

Fola Coal Company, LLC

Post Office Box 180

Bickmore, West Virginia 25019

LOCATION: Ike Fork No. 1 Surface Mine is located at Latitude 38° 22'39" and Longitude 80° 59'02" on the Swandale and Gilboa U.S. Geological Quadrangles, approximately 7 miles southeast of Gilboa in Grant and Summerville Districts of Nicholas County and Henry District of Clay County, West Virginia. The proposed Ike Fork No. 1 Surface Mine would result in disturbances to two unnamed tributaries of Lilly Fork, Sycamore Run, and seven unnamed tributaries to Sycamore Run. Sycamore Run flows into Lilly Fork which flows into Buffalo Creek. Buffalo Creek ultimately flows into Elk River, a navigable (Section 10) water of the U.S.

Ike Fork No. 2 Surface Mine is located at Latitude 38° 22'12" and Longitude 80° 58'10" on the Swandale and Gilboa U.S. Geological Quadrangles, approximately 7 miles southeast of Gilboa in Grant and Summerville Districts of Nicholas County, West Virginia. The proposed Ike Fork No. 2 Surface Mine would result in disturbances to numerous unnamed tributaries of Ike Fork. Ike Fork flows into Lilly Fork which flows into Buffalo Creek. Buffalo Creek ultimately flows into Elk River, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant has requested a Department of the Army Permit for unauthorized and proposed discharges of dredged or fill material into waters of the United States (U.S.) in conjunction with construction, operation and reclamation of the Ike Fork No. 1 and No. 2 Surface Mines. The Ike Fork Mines are combination steep slope contour surface and auger/highwall surface mining operations. The provided information indicates unauthorized discharges of dredged or fill material have resulted in adverse impacts to approximately 1,400 linear feet (0.298 acres) in waters of the U.S. in conjunction with the construction of five sediment ponds (1, 2, 3, 4 and 5) approved under Surface Mining Control and Reclamation Act (SMCRA) permit S-2005-99, (Ike Fork No. 2) issued by the West Virginia Department of Environmental Protection (WVDEP) on February 22, 2002. Mining activities have been ongoing at this site on a sporadic basis following the issuance of the SMCRA permit. In addition to these unauthorized activities, approximately 1,137 linear feet (0.0121 acres) of material has been placed in waters of the U.S. in conjunction with the construction of three sediment ponds (1, 2 and 3) approved under SMCRA permit S-2012-98 (Ike Fork No. 1) issued by the WVDEP on July 30, 2001 and under the December 13, 1996 Federal Register, Final Notice Issuance, Reissuance and Modification of Nationwide Permits (61 FR 65874), Nationwide Permit 21 (NWP 21) on September 7, 2001, which expired February 11, 2002. The NWP 21 verification was issued to Vandalia Resources, Inc., which is the company responsible for conducting the unauthorized activities in waters of the U.S. associated with Ike Fork No.2 prior to Fola Coal Company, LLC acquiring the rights to mine the coal reserves under the above mentioned SMCRA permits. Since Fola Coal Company, LLC has acquired these SMCRA permits they are responsible for any course of action taken by the USACE regarding the unauthorized activities associated with Ike Fork No.2.

Eleven valley fills are proposed and have not been started. Construction of the four valley fills associated with Ike Fork No. 1 would permanently impact 6,030 linear feet (0.784 acre) of intermittent and 5,000 linear feet (0.350 acre) of ephemeral streams, and the secondary impacts of the proposed activities would temporarily impact 1,323 linear feet (0.180 acre) of intermittent streams. Construction of the seven valley fills associated with Ike Fork No. 2 would permanently impact 10,200 linear feet (1.566 acres) of intermittent and 6,516 linear feet (0.765 acre) of ephemeral streams, and the secondary impacts of the proposed activities would temporarily impact 1,025 linear feet (0.123 acre) of intermittent streams and 100 linear feet (0.009 acre) of ephemeral streams. The proposed activities would result in permanent impacts to 16,230 linear feet (2.350 acres) of intermittent streams and 11,516 linear feet (1.115 acres) of ephemeral streams and secondary impacts to 100 linear feet of ephemeral streams (0.009 acre) and 2,348 linear feet (0.303 acre) of intermittent streams. In total, the unauthorized and proposed activities would result in adverse impacts to approximately 21,115 linear feet (3.07 acres) of intermittent streams and 11,616 linear feet (1.12 acres) of ephemeral streams for a total of 32,731 linear feet or 4.2 acres of waters of the U.S. Table A of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and stream loss (linear feet and acres). All of the proposed valley fills would drain watersheds of less than 250 acres and range from 21.74 acres to 225.11 acres as detailed on the Table B of this public notice. Approximately 6,095 cubic yards of unspecified, non-toxic, durable material would be discharged within the USACE regulatory

jurisdiction in conjunction with construction of the proposed structures. According to the applicant, the purpose of the project is to recover bituminous coal reserves Lower Kittanning and Clarion seams. Details regarding the applicant's mine plan can be found in Section N of the applicant's Surface Mining Application on file at the WVDEP. Plans for the proposed valley fills and associated sediment ponds are attached to this public notice.

As previously described, the work was completed without prior authorization. As required by the rules and regulations governing the Department of the Army permit program, it was determined that since this work does not present an immediate threat to life or property, an After-the-Fact application would be accepted and processed. All investigations and legal proceedings will be suspended pending the outcome of the permit review process. This application will be evaluated on its own merits and no consideration will be given to the applicant's unauthorized work activities or prior expenditures.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. At this time, the applicant has not submitted the required alternative analysis.

MITIGATION PLAN: To date, the applicant has not submitted a compensatory mitigation plan to this office.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. In a letter dated September 1, 1993 for Ike No. 1 (FR: 98-914-MULTI) and in a letter dated September 24, 1999 for Ike No. 2 (FR: 99-640-NI), the West Virginia Division of Culture and History (SHPO) concluded no historical, architectural or archaeological sites listed on or eligible for inclusion in the NRHP would be affected by the proposed projects. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. This public notice serves as a request to the Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections

they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

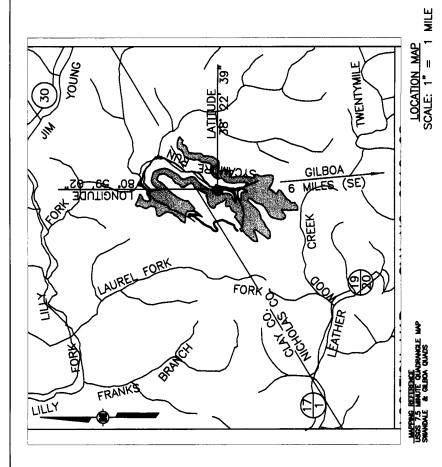
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.

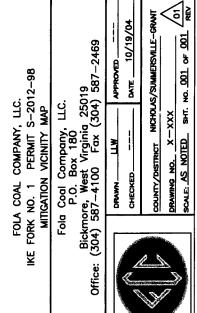
Singer Mullins, Chief Regulatory Branch

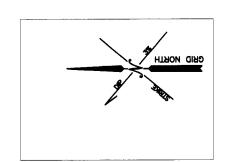
Table B
Fola Coal Company, Inc.
Affected Drainage Areas

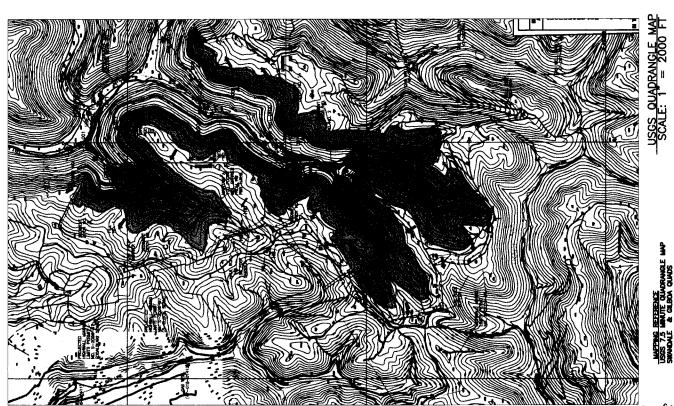
Disposal Site	Drainage Area at Toe of Fill (acres)
	Ike No. 1 Surface Mine
Valley Fill No. 1	192.94
Valley Fill No. 2	121.36
Valley Fill No. 3	138.95
Valley Fill No. 4	33.51
	Ike No. 2 Surface Mine
Valley Fill No. 1	37.44
Valley Fill No. 2	41.30
Valley Fill No. 3	44.82
Valley Fill No. 4	225.11
Valley Fill No. 5	52.86
Valley Fill No. 6	21.74
Valley Fill No. 7	168.24

	å	Permanent Impacts					and .	Intermittent Impacts				
					Secondary			Authorized			Unsutherized	
	Epheneal	Intermittent	Total	Ephaneral	Intermittent	Total	Ephemeral	Intermittent	Total	Ephemeral	Intermittent	Togel
					Ike F	Ike Fork No. 1						
Fill No. 1	2,300 (0.164)	1,400 (0.182)	3,700 (0.346)	:	1	!	1	-	1		:	ŀ
Pond No. 1	1	ı			425 (0.061)	425 (0.061)		375 (0.035)	375 (0.035)		ŀ	
Fill No. 2	1,500 (0.106)	2,638 (0.314)	4,138 (0.420)			1			-		•	
Fill No. 3	1,200	1,992 (0.288)	3,192 (0.368)	:	1	-		1	1		!	
Pond No. 2	1		ı	-	1	i	:	400 (0.051)	400 (0.051)	-		1
Fill No. 4	0	0	0		1	-		-			:	
Pond No. 3	l	ł	i		398 (0.055)	398 (0.055)		362 (0.035)	362 (0.035)	ļ	1	
Area b/t 2&3	!	i	ļ		500 (0.064)	500 (0.064)		!		:	1	
Total	5,000	6,030	11,030	c	1,323	1,323	•	1,137	1,137	•	•	•
					Ike F	Ike Fork No. 2						
Fill No. 1	300 (0.014)	550 (0.056)	850 (0.070)		:	-	:	;	-	-	:	
Fill No. 5	500 (0.073)	1,200 (0.119)	1,700	ı	1	1	1		ı		l	
Pond No. 1				100 (0.009)	50 (0.007)	150 (0.016)		1	-	-	275 (0.079)	275 (0.079)
Fill No. 2	950 (0.148)		950 (0.148)						;			
Pond No. 2	:	-	i		175 (0.040)	175 (0.040)		i			175 (0.036)	175 (0.036)
Fill No. 3	200 (0.004)	950 (0.123)	1,150 (0.127)		1	1					!	
Pond No. 3	1	1	ı	!	90 (0.023)	90 (0.023)		I	1	i	160 (0.040)	160 (0.040)
Fill No. 4	2,150 (0.246)	4,500 (0.738)	6,650 (0.984)		-	-		**	1	1	I	1
Pond No. 4				-	25 (0.006)	25 (0.006)	:			:	375 (0.084)	375 (0.084)
Fill No. 6	600 (0.040)	i	600 (0.040)	ŀ	I	-		-	-	ł	ı	ļ
Fill No. 7	1,816 (0.240)	3,000 (0.530)	4,866 (0.770)	-	ł	1		1	i	ļ	1	
Pond No. 5	I	1	l	i	685 (0.047)	685 (0.047)	i	1	1		415 (0.059)	415 (0.059)
Total	6,516 (0.765)	10,200 (1.566)	16,766 (2.331)	100 (0.009)	1,025 (0.123)	1,125 (0.132)	0	0	0	-	1,400 (0.298)	1,400
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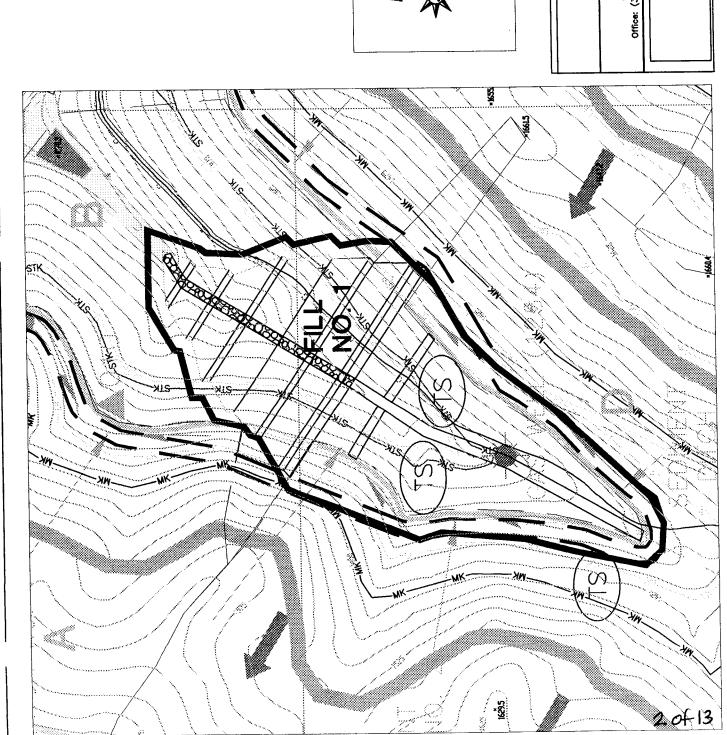


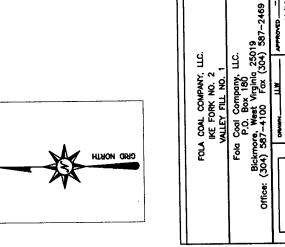






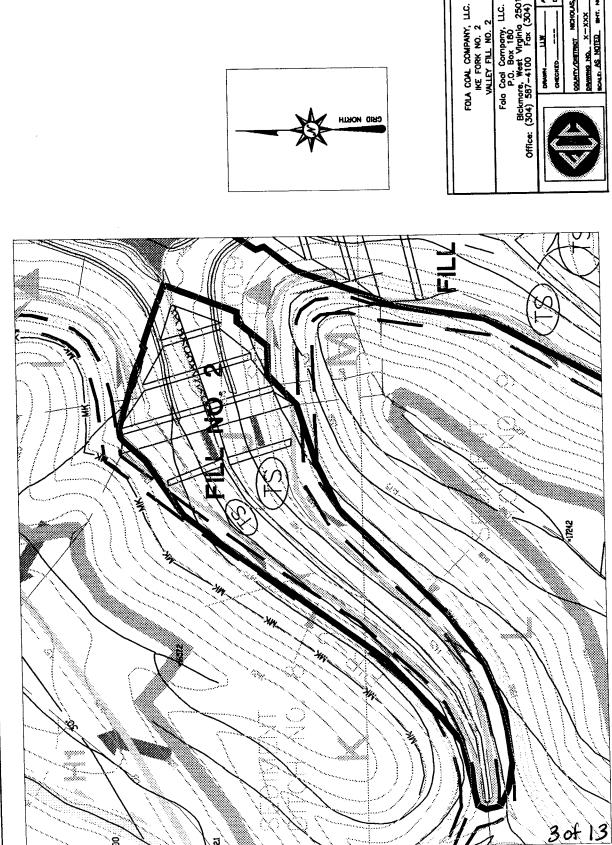
1 of 13





SCALE: 1" = 300 FEET

COUNTY/DISTRICT NICHOLAS/SUMMERSVILE-OR DEMANDE NO. X-XXX SOUL OF 2011 of 2011



Fola Coal Company, LLC.
P.O. Box 180
Bickmore, West Virginia 25019
(304) 587-2469

DOMENIA NO. X—XXX

BOALE, AS NOTED. SHT. NO. 001 OF 001 REV

SCALE: 1" = 300 FEET

